

**CALIFORNIA COASTAL COMMISSION**

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# Th13c

**LCP-6-CAR-20-0078-2 (DENSITY BONUS UPDATE)**

**FEBRUARY 10, 2022**

## EXHIBITS

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**EXHIBIT 1: Ordinance No. CS-382**

**ORDINANCE NO. CS-382**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, ADOPTING A ZONE CODE AMENDMENT AND A LOCAL COASTAL PROGRAM AMENDMENT TO UPDATE THE CITY'S DENSITY BONUS REGULATIONS TO REFLECT CHANGES IN STATE LAW.

CASE NAME: DENSITY BONUS AMENDMENTS 2020  
CASE NO: ZCA 2020-0001/LCPA 2020-0005

WHEREAS, Sections 65915 – 65918 of the California Government Code, known as State Density Bonus Law, requires a city or county to provide a developer that proposes a housing development within the jurisdictional boundaries of that city or county with a density bonus and other incentives or concessions for the production of lower income housing units, or for the donation of land within the development, if the developer agrees to construct a specified percentage of units for very low income, low-income, or moderate-income households or qualifying residents and meets other requirements.

WHEREAS, on Oct. 9, 2019, California Governor Gavin Newsom signed Assembly Bill 1763 (“AB 1763”) into law, which amended Section 65915 to further encourage and incentivize the application of State Density Bonus Law; and

WHEREAS, SB 1763 took effect Jan. 1, 2020, and existing provisions of the City of Carlsbad Municipal Code are inconsistent with the new law provisions; and

WHEREAS, California Government Code Section 65915(a) requires that all cities adopt an ordinance that specifies how compliance with State Density Bonus Law will be implemented; and

WHEREAS, staff has prepared a Zone Code Amendment ZCA 2020-0001 and Local Coastal Program Amendment LCPA2020-0005 pursuant to Chapter 21.52 of the Carlsbad Municipal Code, Section 30514 of the Public Resources Code, and Section 13551 of California Code of Regulations Title 14, Division 5.5; and,

WHEREAS, the Carlsbad Zone Code is the implementing ordinance of the Carlsbad Local Coastal Program, and therefore, an amendment to the Zone Code also constitutes an amendment to the Local Coastal Program; and

WHEREAS, pursuant to California Coastal Commission Regulations, a six-week public review period for the Local Coastal Program Amendment began on May 15, 2020 and ended on June 26, 2020; and

Sept. 15, 2020



WHEREAS, on May 20, 2020, the Airport Land Use Commission reviewed and found the proposed Zone Code Amendment consistent with the adopted McClellan-Palomar Airport Land Use Compatibility Plan; and

WHEREAS, on June 17, 2020, the Planning Commission held a duly noticed public hearing as prescribed by law to consider ZCA 2020-0001/LCPA 2020-0005; and

WHEREAS, the Planning Commission adopted Planning Commission Resolution No. 7373 recommending to the City Council that ZCA 2020-0001/LCPA 2020-0005 be approved; and

WHEREAS, the City Council of the City of Carlsbad held a duly noticed public hearing as prescribed by law to consider ZCA 2020-0001/LCPA 2020-0005; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors, including written public comments, if any, related to ZCA 2020-0001/LCPA 2020-0005; and

NOW THEREFORE, the City Council of the City of Carlsbad, California, ordains as follows that:

1. The above recitations are true and correct.
2. The findings of the Planning Commission in Planning Commission Resolution No. 7373 shall also constitute the findings of the City Council.
3. Chapter 21.86 of the Carlsbad Municipal Code is hereby repealed and replaced to read as follows:

#### **Chapter 21.86 DENSITY BONUS**

##### **21.86.010 Purpose.**

The public good is served when there exists in a city, housing which is appropriate for the needs of and affordable to the public who reside within that city. There is in the City of Carlsbad a need for housing affordable to various groups, such as lower income, moderate income and senior citizen households. Therefore, it is in the public interest for the city to promote the construction of such additional housing through the exercise of its powers and utilization of its resources to facilitate the development of quality housing affordable for these types of households.

- A. It is the purpose of this section to specify how compliance with Government Code Section 65915 et seq. ("State Density Bonus Law") will be implemented, as required by Government Code Section 65915, subdivision (a).
- B. It is the purpose of this section to implement the goals, objectives and policies of the Housing Element of the city's General Plan.

- C. It is the purpose of this section to provide the implementing framework, as it relates to affordable housing density bonuses, and offer concessions and incentives for eligible housing developments which are consistent with the city's long-standing commitment to provide for affordable housing.

**21.86.020 Definitions.**

The definitions found in State Density Bonus Law shall apply to the terms contained in this section.

**21.86.030 Applicability.**

A housing development as defined in State Density Bonus Law shall be eligible for a density bonus and other regulatory incentives that are provided by State Density Bonus Law when the applicant seeks and agrees to provide very-low, low or moderate income housing units, or units intended to serve seniors, transitional foster youth, disabled veterans, homeless persons, and lower income students in the threshold amounts specified in State Density Bonus Law. A housing development includes only the residential component of a mixed-use project. A commercial development as defined in Section 21.86.110 shall be eligible for a commercial development bonus as provided in Section 21.86.110.

The granting of a density bonus, incentive or concession, pursuant to this section, shall not be interpreted, in and of itself, to require a general plan amendment, development code amendment, zone change, other discretionary approval, or the waiver of a city ordinance or provisions of a city ordinance unrelated to development standards.

**21.86.040 Application Requirements.**

- A. Any applicant requesting a density bonus and any incentive(s), waiver(s), parking reductions, or commercial development bonus provided by State Density Bonus Law shall submit a density bonus report as described below concurrently with the filing of the planning application for the first discretionary permit required for the housing development, commercial development, or mixed-use development. The requests contained in the density bonus report shall be processed concurrently with the planning application. The applicant shall be informed whether the application is complete consistent with California Government Code Section 65943.
- B. The density bonus report shall include the following minimum information:
  - 1. Requested Density Bonus.
    - a. Summary table showing the maximum number of dwelling units permitted by the zoning and general plan excluding any density bonus units, proposed affordable units by income level, proposed bonus percentage, number of density bonus units proposed, total number of dwelling units proposed on the site, and resulting density in units per acre.

- b. A tentative map and/or preliminary site plan, drawn to scale, showing the number and location of all proposed units, designating the location of proposed affordable units and density bonus units.
- c. The zoning and general plan designations and assessor's parcel number(s) of the housing development site.
- d. A description of all dwelling units existing on the site in the five-year period preceding the date of submittal of the application and identification of any units rented in the five-year period. If dwelling units on the site are currently rented, income and household size of all residents of currently occupied units, if known. If any dwelling units on the site were rented in the five-year period but are not currently rented, the income and household size of residents occupying dwelling units when the site contained the maximum number of dwelling units, if known.
- e. Description of any recorded covenant, ordinance, or law applicable to the site that restricted rents to levels affordable to very-low or lower income households in the five-year period preceding the date of submittal of the application.
- f. If a density bonus is requested for a land donation, the location of the land to be dedicated, proof of site control, and reasonable documentation that each of the requirements included in California Government Code Section 65915, subdivision (g) can be met.

2. Requested Concession(s) or Incentive(s).

In the event an application proposes concessions or incentives for a housing development pursuant to State Density Bonus Law, the density bonus report shall include the following minimum information for each incentive requested, shown on a site plan if appropriate:

- a. The City's usual development standard and the requested development standard or regulatory incentive.
- b. Except where mixed-use zoning is proposed as a concession or incentive, reasonable documentation to show that any requested incentive will result in identifiable and actual cost reductions to provide for affordable housing costs or rents.
- c. If approval of mixed-use zoning is proposed, reasonable documentation that nonresidential land uses will reduce the cost of the housing development, that the nonresidential land uses are compatible with the housing development and the existing or planned development in the area where the proposed housing development will be located, and that mixed-use zoning will provide for affordable housing costs or rents.

3. Requested Waiver(s).

In the event an application proposes waivers of development standards for a housing development pursuant to State Density Bonus Law, the density bonus report shall include the following minimum information for each waiver requested on each lot, shown on a site plan if appropriate:

- a. The City's usual development standard and the requested development standard.
- b. Reasonable documentation that the development standards for which a waiver is requested will have the effect of physically precluding the construction of a development at the densities or with the concessions or incentives permitted by California Government Code Section 65915.

4. Requested Parking Reduction.

In the event an application proposes a parking reduction for a housing development pursuant to California Government Code Section 65915, subdivision (p), a table showing parking required by the zoning regulations, parking proposed under Section 65915, subdivision (p), and reasonable documentation that the project is eligible for the requested parking reduction.

5. Child Care Facility.

If a density bonus or incentive is requested for a child care facility in a housing development, reasonable documentation that all of the requirements included in California Government Code Section 65915, subdivision (h) can be met.

6. Condominium Conversion.

If a density bonus or incentive is requested for a condominium conversion, reasonable documentation that all of the requirements included in California Government Code Section 65915.5 can be met.

7. Commercial Development Bonus.

If a commercial development bonus is requested for a commercial development, the application shall include the proposed partnered housing agreement and the proposed commercial development bonus, as defined in Section 21.86.110, and reasonable documentation that each of the standards included in Subsection 21.86.110(C) has been met.

8. Fee.

Payment of any fee in an amount set by resolution of the City Council for staff time necessary to determine compliance of the Density Bonus Plan with State Density Bonus Law.

**21.86.050 Density Bonus.**

All calculations are rounded up for any fractional numeric value in determining the total number of units to be granted, including base density and bonus density as well as the resulting number of affordable units needed for a given density bonus project.

- A. If a housing development qualifies for a density bonus under more than one income category, or additionally as a senior citizen housing development as defined in Chapter 21.84 and State Density Bonus Law, or as housing intended to serve transitional foster youth, disabled veterans, homeless persons, or lower income students, the applicant shall identify the categories under which the density bonus would be associated and granted. Density bonuses from more than one category can be combined up to the maximum allowed under State Density Bonus law.
- B. The density bonus units shall not be included in determining the number of affordable units required to qualify a housing development for a density bonus pursuant to State Density Bonus Law.
- C. The applicant may elect to accept a lesser percentage of density bonus than *the housing development* is entitled to, or no density bonus, but no reduction will be permitted in the percentages of required affordable units contained in California Government Code Section 65915, subdivisions (b), (c), and (f). Regardless of the number of affordable units, no housing development shall be entitled to a density bonus of more than what is authorized under State Density Bonus Law.

**21.86.060 Incentives.**

- A. Incentives include incentives and concessions as defined in State Density Bonus Law. The number of incentives that may be requested shall be based upon the number the applicant is entitled to pursuant to State Density Bonus Law.
- B. Nothing in this section requires the provision of direct financial incentives for the housing development, including, but not limited to, the provision of financial subsidies, publicly owned land, fee waivers, or waiver of dedication requirements. The city, at its sole discretion, may choose to provide such direct financial incentives.

**21.86.070 Local Coastal Program Consistency.**

- A. State Density Bonus Law provides that it shall not be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Cal. Public Resources Code § 30000 et seq.), and further provides that the granting of a density bonus or an incentive shall not be interpreted, in and of itself, to require a local coastal plan amendment.
- B. For development within the coastal zone, any requested density bonus, incentive(s), waiver(s), parking reduction(s), or commercial development bonus shall be consistent with all applicable requirements of the certified Carlsbad Local Coastal Program, with the exception of density.

**21.86.080 Review Procedures.**

All requests for density bonuses, incentives, parking reductions, waivers, or commercial development bonuses shall be considered and acted upon by the approval body with authority to approve the development within the timelines prescribed by California Government Code Section 65950 et seq., with right of appeal to the City Council.

- A. Eligibility for Density Bonus, Incentive(s), Parking Reduction, and/or Waiver(s) for a Housing Development. To ensure that an application for a housing development conforms with the provisions of State Density Bonus Law and the Coastal Act, the staff report presented to the decision-making body shall state whether the application conforms to the following requirements of state law as applicable:
  - 1. The housing development provides the affordable units or senior housing required by State Density Bonus Law to be eligible for the density bonus and any incentives, parking reduction, or waivers requested, including the replacement of units rented or formerly rented to very-low and low income households as required by California Government Code Section 65915, subdivision (c)(3).
  - 2. Any requested incentive will result in identifiable and actual cost reductions to provide for affordable housing costs or rents; except that, if a mixed-use development is requested, the application must instead meet all of the requirements of California Government Code Section 65915, subdivision (k)(2).
  - 3. The development standards for which a waiver is requested would have the effect of physically precluding the construction of a development at the densities or with the concessions or incentives permitted by California Government Code Section 65915.
  - 4. The housing development is eligible for any requested parking reductions under California Government Code Section 65915, subdivision (p).
  - 5. If the density bonus is based all or in part on donation of land, all of the requirements included in California Government Code Section 65915, subdivision (g) have been met.



6. If the density bonus or incentive is based all or in part on the inclusion of a child care facility, all of the requirements included in California Government Code Section 65915, subdivision (h) have been met.
  7. If the density bonus or incentive is based all or in part on the inclusion of affordable units as part of a condominium conversion, all of the requirements included in California Government Code Section 65915.5 have been met.
  8. If the housing development is in the coastal zone, the requested density bonus and any requested incentive(s), waiver(s), or parking reduction(s) are consistent with all applicable requirements of the certified Carlsbad Local Coastal Program, with the exception of density.
- B. If a commercial development bonus is requested for a commercial development, the decision-making body shall make a finding that the development complies with all of the requirements of Subsection 21.86.110(C), that the city has approved the partnered housing agreement, and that the commercial development bonus has been mutually agreed upon by the city and the commercial developer. If the project is in the coastal zone, the decision-making body shall also find that the commercial development bonus is consistent with all applicable requirements of the certified Carlsbad Local Coastal Program, with the exception of density.
- C. The decision-making body shall grant an incentive requested by the applicant unless it makes a written finding, based upon substantial evidence, of any of the following:
1. The proposed incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in California Health and Safety Code Section 50052.5, or for affordable rents, as defined in California Health and Safety Code Section 50053; or
  2. The proposed incentive would be contrary to state or federal law; or
  3. The proposed incentive would have a specific, adverse impact upon public health or safety or the physical environment or on any real property that is listed in the California Register of Historic Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the housing development unaffordable to low and moderate income households. For the purpose of this subsection, specific adverse impact means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application for the housing development was deemed complete.
- D. The decision-making body shall grant the waiver of development standards requested by the applicant unless it makes a written finding, based upon substantial evidence, of any of the following:

1. The proposed waiver would be contrary to state or federal law; or
  2. The proposed waiver would have an adverse impact on any real property listed in the California Register of Historic Resources; or
  3. The proposed waiver would have a specific, adverse impact upon public health or safety or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the housing development unaffordable to low and moderate income households. For the purpose of this subsection, specific adverse impact means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application for the housing development was deemed complete.
- E. If any density bonus, incentive, parking reduction, waiver, or commercial development bonus is approved pursuant to this chapter, the applicant shall enter into an affordable housing agreement or senior housing agreement with the city pursuant to Section 21.86.090.

**21.86.090 Affordable Housing Agreement and Senior Housing Agreement.**

- A. Affordable Housing Agreement. Except where a density bonus, incentive, waiver, parking reduction, or commercial development bonus is provided for a market-rate senior housing development, the applicant shall enter into an affordable housing agreement with the city, in a form approved by the city attorney, to be executed by the city manager, to ensure that the requirements of this section are satisfied. The affordable housing agreement shall guarantee the affordability of the affordable units for a minimum of 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program; shall identify the type, size and location of each affordable unit; and shall specify phasing of the affordable units in relation to the market-rate units.
- B. Senior Housing Agreement. Where a density bonus, waiver, or parking reduction is provided for a market-rate senior housing development, the applicant shall enter into a restrictive covenant with the city, running with the land, in a form approved by the city attorney, to be executed by the city manager, to require that the housing development be operated as "housing for older persons" consistent with state and federal fair housing laws.
- C. The executed affordable housing agreement or senior housing agreement shall be recorded against the housing development prior to final or parcel map approval, or, where a map is not being processed, prior to issuance of building permits for the housing development. The affordable housing agreement or senior housing agreement shall be binding on all future owners and successors in interest.
- D. The affordable housing agreement shall include, but not be limited to, the following:
  1. The number of density bonus dwelling units granted;

2. The number and type of affordable dwelling units
3. The unit size(s) (square footage) of target dwelling units and the number of bedrooms per target dwelling unit;
4. The proposed location of the affordable dwelling units;
5. Schedule for production of affordable dwelling units;
6. Incentives or concessions or waivers provided by the city;
7. Where applicable, tenure and conditions governing the initial sale of the affordable units;
8. Where applicable, tenure and conditions establishing rules and procedures for qualifying tenants, setting rental rates, filling vacancies, and operating and maintaining units for affordable rental dwelling units
9. Marketing plan; publication and notification of availability of affordable units;
10. Compliance with federal and state laws;
11. Prohibition against discrimination;
12. Indemnification;
13. City's right to inspect units and documents;
14. Remedies.

**21.86.100 Design and Quality.**

- A. The city may not issue building permits for more than 50 percent of the market rate units until it has issued building permits for all of the affordable units, and the city may not approve any final inspections or certificates of occupancy for more than 50 percent of the market rate units until it has issued final inspections or certificates of occupancy for all of the affordable units.
- B. Affordable units shall be comparable in exterior appearance and overall quality of construction to market rate units in the same housing development. Interior finishes and amenities may differ from those provided in the market rate units, but neither the workmanship nor the products may be of substandard or inferior quality as determined by the city.
- C. The number of bedrooms of the affordable units shall at least equal the minimum number of bedrooms of the market rate units.

**21.86.110 Commercial Density Bonus.**

- A. The following definitions shall apply to Commercial Density Bonus:

1. "Commercial development" means a development project for nonresidential uses.
  2. "Commercial development bonus" means a modification of development standards mutually agreed upon by the city and a commercial developer and provided to a commercial development eligible for such a bonus under Subsection 21.86.110(C). Examples of a commercial development bonus include an increase in floor area ratio, increased building height, or reduced parking.
  3. "Partnered housing agreement" means an agreement approved by the city between a commercial developer and a housing developer identifying how the commercial development will provide housing available at affordable ownership cost or affordable rent consistent with Subsection 21.86.110(C). A partnered housing agreement may consist of the formation of a partnership, limited liability company, corporation, or other entity recognized by the state in which the commercial developer and the housing developer are each partners, members, shareholders, or other participants, or a contract between the commercial developer and the housing developer for the development of both the commercial development and the housing development.
- B. When an applicant proposes to construct a commercial development and has entered into a partnered housing agreement approved by the city, the city shall grant a commercial development bonus mutually agreed upon by the developer and the city. The commercial development bonus shall not include a reduction or waiver of fees imposed on the commercial development to provide for affordable housing.
- C. The requirements for commercial development bonus are as follows, which also be described in the partnered housing agreement:
1. The housing development shall be located either: (A) on the site of the commercial development; or (B) on a site within the city that is within one-half mile of a major transit stop and is located in close proximity to public amenities, including schools and employment centers.
  2. At least 30 percent of the total units in the housing development shall be made available at affordable ownership cost or affordable rent for low-income households, or at least 15 percent of the total units in the housing development shall be made available at affordable ownership cost or affordable rent for very low-income households.
  3. The commercial developer must agree either to directly build the affordable units; donate a site consistent with subparagraph 1 above for the affordable units; or make a cash payment to the housing developer for the affordable units.
- D. Any approved partnered housing agreement shall be described in the city's Housing Element annual report as required by California Government Code Section 65915.7, subdivision (k).

**21.86.120 Interpretation.**

If any portion of this chapter conflicts with State Density Bonus Law or other applicable state law, state law shall supersede this chapter. Any ambiguities in this chapter shall be interpreted to be consistent with State Density Bonus Law.

**21.86.130 Inclusionary housing.**

All housing development projects are required to provide affordable housing units in accordance with Chapter 21.85, Inclusionary Housing, of this title. If an applicant seeks to construct affordable housing to qualify for a density bonus in accordance with the provisions of this chapter, those affordable dwelling units provided to meet the inclusionary requirement established pursuant to Chapter 21.85 of this title shall be counted toward satisfying the density bonus requirements of this chapter.

**21.86.140 Severability.**

If any provision of this chapter or its application to any person or circumstances is held invalid, the remainder of the chapter and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected. (Ord. CS-102 § CXVI, 2010; Ord. NS-794 § 11, 2006)

**EFFECTIVE DATE OF THIS ORDINANCE APPLICABLE TO PROPERTIES OUTSIDE THE COASTAL ZONE:**

This ordinance shall be effective thirty days after its adoption; and the City Clerk shall certify the adoption of this ordinance and cause the full text of the ordinance or a summary of the ordinance prepared by the City Attorney to be published at least once in a newspaper of general circulation in the City of Carlsbad within fifteen days after its adoption.

**EFFECTIVE DATE OF THIS ORDINANCE APPLICABLE TO PROPERTIES INSIDE THE COASTAL ZONE:**

This ordinance shall be effective thirty days after its adoption or upon Coastal Commission approval of LCPA 2020-0005, whichever occurs later; and the City Clerk shall certify the adoption of this ordinance and cause the full text of the ordinance or a summary of the ordinance prepared by the City Attorney to be published at least once in a newspaper of general circulation in the City of Carlsbad within fifteen days after its adoption.

INTRODUCED AND FIRST READ at a Regular Meeting of the Carlsbad City Council on the 1st day of September, 2020, and thereafter


PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the 15th day of September, 2020, by the following vote, to wit:

AYES: Hall, Blackburn, Bhat-Patel, Schumacher.

NAYS: None.

ABSENT: None.

APPROVED AS TO FORM AND LEGALITY:

  
CELIA A. BREWER, City Attorney

  
MATT HALL, Mayor

  
BARBARA ENGLESON, City Clerk  
(SEAL)

